

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DAVID EMMANUEL LUCAS,

Plaintiff,

vs.

SAM JOVANOVICH, TAYLOR
CUNNINGHAM, KEN ARNOLD, SGT.
WOHLMAN, LEROY KIRKEGARD, and
DAN HUNTER,

Defendants.

CV 15-00076-H-DLC-JTJ

FINDINGS AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE
JUDGE

Pending is Defendants' Motion to Dismiss for Failure to State a Claim upon which Relief can be Granted. (Doc. 8.) There are several problems with Defendants' Motion. First, Defendants represent that counsel attempted to contact Plaintiff regarding the filing of this motion in compliance with Local Rule 7.1(c)(1) but was unsuccessful. Counsel is legal counsel for the Department of Corrections and Warden Kirkegard. Mr. Lucas is incarcerated at Montana State Prison. It is unclear why counsel's efforts at contacting a prisoner within Montana State Prison were unsuccessful or even what efforts were made.

More important, however, is that this Court conducted a screening of Mr. Lucas's Complaint (Doc. 2) and on December 7, 2015, issued an Order stating that

it had:

considered whether Mr. Lucas's Complaint is frivolous, malicious, fails to state a claim, or seeks solely monetary relief from a defendant who is immune. *See* 28 U.S.C. §§ 1915(e)(2), 1915A(b). It has also considered whether Mr. Lucas has a reasonable opportunity to prevail on the merits. *See* 42 U.S.C. § 1997e(g). Dismissal is not appropriate at this time. Defendants must respond to the Complaint.

(December 7, 2015 Order, Doc. 6 at 3.)

The Court considered whether the Complaint failed to state a claim and whether Mr. Lucas had alleged personal involvement of all the named Defendants in the alleged constitutional violation. The Court found that Mr. Lucas had set forth sufficient facts to state a claim upon which relief could be granted.

Defendants' motion is therefore not well taken.

Based on the foregoing, the Court issues the following:

RECOMMENDATION

Defendants' Motion to Dismiss for Failure to State a Claim (Doc. 8) should be **DENIED**.

DATED this 9th day of February, 2016.

/s/ John Johnston
John Johnston
United States Magistrate Judge